

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation:

VICTOR V. KITT, M.D.
Certificate No. C-41263

Petitioner

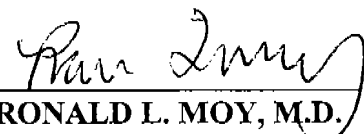
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) No: 08-1990-3151
) OAH No. N2004070459
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DECISION

The attached Proposed Decision is hereby adopted by the Division of Medical Quality as its
Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on October 18, 2004.

IT IS SO ORDERED September 16, 2004

By: 
RONALD L. MOY, M.D.
Chair - Panel B
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation of:

VICTOR V. KITT, M.D.
1902 B Street
Bakersfield, California 93301

Physician's and Surgeon's Certificate
No. C 41263

Petitioner.

Case No. D-4739

OAH No. N2004070459

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on August 17, 2004, in Oakland, California.

David R. Lampe, Esq., Appeared on behalf of Victor V. Kitt, M.D., who was also present.

Lynne K. Dombrowski, Deputy Attorney General, appeared on behalf of the Department of Justice.

The case was submitted for decision on August 17, 2004.

FACTUAL FINDINGS

1. On January 30, 1984, Victor V. Kitt, M.D. (petitioner) was issued Physician's and Surgeon's Certificate No. C 41263 by the Medical Board of California (Board).

2. On May 28, 1992, and on April 29, 1994, an accusation and first supplemental accusation, respectively, were filed against petitioner alleging that his actions in connection with his treatment of three patients in 1989 constituted gross negligence, repeated negligent acts and incompetence. Two of the patients underwent cosmetic breast surgery. A third patient underwent surgical excision of a tissue mass from her left supraclavicular area. Respondent is an ear, nose, throat (ENT) specialist and he acknowledges that his surgical work on these patients was outside his specialty.

On January 31, 1995, a Stipulated Settlement and Decision and Order was executed under which terms petitioner's license to practice medicine was revoked. However, the revocation was stayed and he was placed on five (5) years probation under specified terms and conditions including that he successfully complete a course in ethics, that he take and pass an oral or written examination in otolaryngology administered by the Division of Medical Quality or its designee, that his practice be monitored by another physician in his field of practice, that he not practice general surgery or surgery that is solely for plastic or cosmetic purposes, and that he observe other standard terms and conditions of probation.

Petitioner has complied with all the terms and conditions of his probation. He remains on probation only because his probation was tolled over a five year period that he was outside the country (1995-2000). As a consequence, his probation is scheduled to terminate on December 15, 2006.

3. Background. Petitioner completed his medical studies at Chiangmai University Medical School in Thailand. In 1966, he came to the United States and did a surgical internship at Washington, D.C. General Hospital, Howard University Service, followed by a general surgery residency at Sinai Hospital in Baltimore, Maryland. Between 1968 and 1970 he was a resident in otolaryngology at Eye and Ear Hospital in Brooklyn, New York. From 1970 to 1973, he completed a residency in otolaryngology-maxillofacial surgery at the University of Chicago Medical Center. In 1973, he was certified by the American Board of Otolaryngology. He is a member of the American Academy of Otolaryngology and Head and Neck Surgery, as well as the American Medical Association and the California Medical Association.

Petitioner completed a one year training program in plastic and reconstructive surgery through Indiana University Medical Center between 1992 and 1993.

4. Petitioner traveled to Thailand in 1995, on account of his father's illness. His wife, a physician and infectious disease specialist, remained in Bakersfield. While in Thailand, petitioner performed extensive work at a university helping to train physicians. He also did volunteer work there. Upon returning to the United States he took and passed an oral competency examination in ENT and completed a course in medical ethics. He also engaged in a rather extensive personal study of medical ethics, reading up to fifteen textbooks relating to medical ethics and prevention of medical malpractice.

5. Between August 2000, and May 2001, Petitioner participated in refresher medical education programs at the University of California, Irvine (UCI), University of California, Los Angeles (UCLA), Loma Linda University and the House Ear Institute in Los Angeles. He was a visiting physician at the UCI Department of Otolaryngology between August 15, 2000, and November 15, 2000. He participated in didactic teachings for the residency training program including grand rounds, interdepartmental conferences (ENT-radiology, ENT-pathology), and morbidity and mortality conferences. He was a visiting physician at the UCLA Division of Head and Neck Surgery between February 16, 2001, and

March 15, 2001. He participated in teaching activities through the residency training program, including conferences in the fields of head and neck surgery, pathology, radiology and radiation therapy. He also accompanied faculty members during their private patient visits, including preoperative, postoperative and follow-up visits.

Petitioner was a visiting physician at the Division of Otolaryngology – Head and Neck Surgery, Loma Linda University Medical Center, between March 16, 2001, and May 15, 2001. He participated in residency teaching activities including lectures by guest speakers, head and neck tumor board conferences, interdepartmental conferences (pathology and radiology) and radiation therapy grand rounds. He observed a number of operative procedures and he accompanied faculty members during private patient visits.

Petitioner was a visiting physician at the House Ear Institute between November 16, 2000, and February 15, 2001. He participated in lectures, grand rounds, journal clubs and a hands-on temporal bone dissection as part of a continuing medical education course. He accompanied various clinic otologists and audiologists in their practices and observed various operative procedures.

6. Petitioner has included a number of letters in support of his petition. George D. Chonkich, M.D., is the Program Director of the Division of Otolaryngology at Loma Linda University. He confirms that petitioner was with the attending staff on rounds every morning and spent considerable time with staff as they evaluated patients in the university's outpatient clinic. Dr. Chonkich notes that petitioner demonstrated good basic otolaryngologic knowledge and he believes that petitioner is ready to resume an otolaryngology head and neck practice. He describes petitioner's participation in their program as follows:

All of the attending staff felt that he was hard working, reliable and ethical in all his dealings with patients, attending staff and resident staff. His overall knowledge in the field of Otolaryngology was far above the level of the remainder of the residents in training and I believe his participation in conferences and other academic activities was above that of our average resident....

He exhibited good surgical skills and used good surgical judgment while involved in the operating room with the attending staff. Dr. Kitt has been exposed to a broad spectrum of head and neck medical and surgical problems during his six months with us.

Petitioner has worked closely with his Board assigned probation monitor. Petitioner arranged for Gary Zerlin, M.D., an ENT specialist, to serve as his practice monitor. By December 2003, he submitted 468 cases to Dr. Zerlin for review on a monthly basis. Petitioner also submitted a list of 105 operating room procedures he has performed and these were included as part of this petition. Dr. Zerlin has had opportunity to observe petitioner in both an office and an operating room setting. Dr. Zerlin notes:

Dr. Kitt has demonstrated ample knowledge in the field of ENT. He has received training at several renowned institutions and incorporates these experiences into his practice. Since returning to Bakersfield, Dr. Kitt has shown competency in his medical diagnoses and in his surgical procedures during the past couple of years. These have encompassed a wide scope in the field of ENT. His patient assessments have been appropriate and, to my knowledge, the treatment outcomes have been good. It is my understanding that he relates well to both patients and colleagues.

7. Petitioner has returned to ENT practice exclusively. A condition of probation was that he not perform cosmetic or general surgery. He has no intention of practicing anything other than ENT. Petitioner has full admitting and surgical privileges at Mercy Hospital in Kern County. He has had no negative feedback, complaints or legal actions by hospital peer reviews or from the over 600 patients he has seen. Petitioner also provides emergency room ENT specialty coverage. More than a quarter of such patients are indigent and his willingness to provide physician services is widely appreciated. Raymond Zurcher, M.D. is a board certified emergency physician who has had numerous ENT consultations with petitioner. He notes:

Dr. Kitt has been consistently available, at all times of day or night, to provide specialty consultation relating to ENT cases. He has done this without regards to the patient's financial situation and has treated all of his patients with the same, high standard of care. His medical decisions are consistently appropriate and based on the patient's best interest. The surgical outcomes that I have been able to observe have been good. He is particularly diligent on spending time with his patients, prior to procedures, to explain the risks and benefits in great detail. In fact, I have seen few physicians as meticulous in this regard as Dr. Kitt.

Many other letters were considered and all were laudatory and appreciative of petitioner's contributions to his community. Alpha J. Anders, M.D., highly recommends him and notes that petitioner "demonstrates exceptional ENT knowledge and diagnostic principles. He has been serving our community for several years and has a very loyal following of both patients and physicians, who put their trust in his knowledge and understanding of his field of expertise."

8. Petitioner believes he has fully rehabilitated from shortcomings that led to Board disciplinary action. He has taken advantage of his probationary period to improve his ENT and medical practice skills. He feels he is practicing good medicine at this juncture and that he will continue to do so. Petitioner is seeking early termination of probation because probation is a hindrance in terms of establishing his credentials with his hospital, his peers and with insurance carriers. He finds his ENT practice to be rewarding and he has absolutely no interest in practicing outside his ENT specialty. He has fully complied with every condition of probation.

Petitioner has taken extraordinary steps through medical education programs at UCLA, UCI, Loma Linda University and the House Ear Institute to improve his medical practice skills over the period that he has been on probation. He has also engaged in a comprehensive personal study of medical ethics and malpractice issues. He has committed himself to staying within his practice specialty. Since his return to ENT practice he has been accountable to both his practice monitor, Dr. Zerlin, and to the hospital where he has admitting and surgical privileges. He is highly regarded and valued as a member of the Bakersfield medical community. No public interest would be served by having petitioner continue on probation with the Board. His petition to terminate probation should therefore be granted.

LEGAL CONCLUSIONS

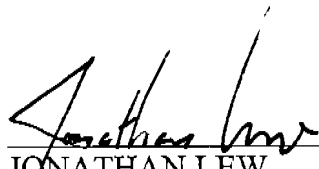
1. Under Business and Professions Code section 2307, a person whose certificate has been placed on probation may petition the Division of Medical Quality for modification of penalty, including termination of probation. At least two years must have elapsed from the effective date of the decision ordering the disciplinary action. That condition has been satisfied here.

2. The matters set forth in Findings 4 through 8 have been considered. Petitioner has made an impressive showing of rehabilitation. He has complied with all the terms of probation, he has submitted recommendations from physicians and surgeons who have personal knowledge of his activities since the disciplinary penalty was imposed, he has participated in a number of medical training and continuing education activities and he has returned to an ENT practice setting in Bakersfield where he is accountable and regularly interacting with his peers. It would not be contrary to the public interest to terminate his probation at this time.

ORDER

The petition of Victor V. Kitt, M.D., for termination of probation is granted. Physician's and Surgeon's Certificate number C 41263 is fully restored.

DATED: August 27, 2004



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings